Office Supreme Court, U.S.
FILED
DEC 23 1957
JOHN T. FEY, Clerk

No. 680

IN THE

United States Court of Appeals

FOR THE THIRD CIRCUIT

NO. 12,216

THE COLD METAL PRODUCTS COMPANY,
Plaintiff-Appellant,

v.

CRUCIBLE STEEL COMPANY OF AMERICA,
Defendant-Appellee.

Appeal from Judgment Entered February 13, 1957 by the District Court of the United States for the District of New Jersey, Civil Action No. 1231-52.

COLD METAL'S APPENDIX

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TABLE OF CONTENTS OF COLD METAL'S APPENDIX

	PAGE
Docket Entries in Civil Action No. 1231-52	1a
Complaint in Civil Action No. 1231-52	6a
Defendant's Answer and Counterclaim	10a
Plaintiff's Reply to Defendant's Counterclaim	14a
Defendant's Supplemental Counterclaim	16a
Plaintiff's Reply to Defendant's Supplemental Counterclaim and Plaintiff's Counterclaim	18a
Defendant's Reply to Plaintiff's Counterclaim	23a

PORTIONS OF THE TRANSCRIPT OF PROCEEDINGS

Opening Statement of Defendant	29a
Stipulations of Counsel	29a
William B. Lockwood	31a
Ralph A. Freed	33a
Dr. George Sachs	51a
William H. Colvin	57a
Leroy Valette	63a
Dr. George Sachs	70a
Ralph A. Freed	77a

PLAINTIFF'S EXHIBITS

P-2	Agreement Between Cold Metal and Crucible, Dated September 30, 1946	80a
P-3	Montgomery Patent No. 2,072,122	91a
P-4	Montgomery Patent No. 2,087,065	109a
P-5	Montgomery Patent No. 2,214,107	113a
P-16	Exhibit P-16-1 through P-16-23 — Drawings of Crucible Mill	131a

DEFENDANT'S EXHIBITS

		PAGE
D-4	Cushwa Patent No. 904,605	177a
D-13-A	Portions of Exhibit D-13-A	181a
	Steckel Patent No. 1,857,670	181a
	Keeney and Ferm Patent No. 1,918,968	185a
	Steckel Patent No. 1,977,214	197a
D-21	Portions of Exhibit D-21	217a
	Article Appearing in "Steel" for June, 1932	217a
	Article Appearing in "The Iron and Steel Engineer" for January, 1933	219a
Opinion of the District Court		229a
Judgment of the District Court		247a
Order Amending Judgment		250a
Notice of Appeal by Crucible		251a
Notice of Appeal by Cold Metal		252a

COLD METAL'S APPENDIX

Docket Entries in Civil Action No. 1231-52

12-18-52	Complaint filed.
12-18-52	Summons issued.
12-18-52	Notice of Allocation (Newark) filed.
12-29-52	Summons returned served on 12-22-52, filed.
1-14-53	Consent order extending time to answer to 2-16-53, filed 1-13-53 (Modarelli) Notice mailed.
2-17-53	Answer and Counterclaim filed 2-16-53.
4-13-53	Stipulation allowing plaintiff's reply filed nunc pro tunc, filed.
4-13-53	Reply, filed.
9-16-53	Ordered pre-trial conference adjourned to next pre-trial calendar. (Modarelli) (9-15-53).
5-12-54	Ordered pre-trial conference adjourned to fall calendar. (Modarelli) (5-11-54).
7-13-54	Order to show cause fixing August 11th, 1954 as hearing date of application to restrain prosecution of action in Western District of Penna., and for leave to file supplemental counterclaim, filed 7-12-54. (Modarelli) Notice mailed.
7-19-54	Affidavit of William H. Webb in opposition to defendant's motions, filed 7-16-54.
8-13-54	Hearing on order to show cause re: to restrain prosecution in Western District of Pa. Decision Reserved. Hearing on application to file supplemental counterclaim. Decision Reserved. (Modarelli) (8-11-54)

Docket Entries in Civil Action No. 1231-52.

10-26-54	Motion to transfer action to the Western District of Pennsylvania, filed 10-25-54.
11- 1-54	Notice of motion to transfer action to the Western District of Pennsylvania, and acknowledgment of service, filed. (ret. 11-22-54). No brief submitted.
11-18-54	Affidavit of Kurt R. Vegel re motion to transfer action filed 11-17-54.
11-18-54	Affidavit of Charles E. Kenworthey in opposition to motion to transfer action filed 11-17-54.
11-18-54	Affidavit of Charles H. Walker filed 11-17-54.
11-23-54	Hearing on motion to transfer action to Western District of Penn. Decision Reserved. (Modarelli) 11-22-54.
11-29-54	Transcript of hearing on order to show cause heard on Aug. 11, 1954, filed 11-26-54.
11-29-54	Transcript of hearing on motion to transfer action to the Western District of Pennsylvania, filed 11-26-54.
12-23-54	Opinion filed 12-22-54. (Modarelli) (Motion to transfer Denied; defendant's motion to file supplemental counterclaim, Granted)
1-19-55	Notice of Settlement filed 1-18-55.
1-26-55	Order granting defendant's motion to file supplemental counterclaim; denying plaintiff's motion to transfer action to U.S. District Court for the Western District of Pennsylvania; enjoining plaintiff from prosecuting action in Pennsylvania, filed 1-25-55. (Modarelli) Notice mailed.

Docket Entries in Civil Action No. 1251-52.

1-31-55	Supplemental Counterclaim, filed.
1-31-55	Affidavit of service of supplemental counterclaim and order, filed.
2-17-55	Plaintiff's Reply to defendant's Supplemental Counterclaim and Plaintiff's Counterclaim, filed 2-16-55.
3- 9-55	Defendant's reply to plaintiff's counterclaim, filed 3-8-55
9-16-55	Pre-Trial Conference. (Modarelli) (9-15-55).
10- 4-55	Transcript of pre-trial conference, filed 10-3-55.
3-23-56	Trial without Jury before Hon. Alfred E. Modarelli (3-22-56). Trial adjourned to 3-23-56.
3-26-56	Motion to amend counterclaim filed, 3-23-56.
3-26-56	Trial continued: 3-23-56. Ordered motion to amend counterclaim, Granted. Trial adjourned to 3-27-56.
3-28-56	Trial continued: (3-27-56). Trial adjourned to 3-28-56.
3-29-56	Trial continued: (3-28-56). Trial adjourned to 3-29-56.
4- 2-56	Trial continued: (3-29-56). Trial adjourned to 4-3-56.
4- 4-56	Trial continued: (4-3-56). Trial adjourned to 4-4-56.
4- 5-56	Trial continued: (4-4-56). Application by plaintiff for leave to withdraw exhibits P-7 thru P-14 and P-17 granted. Trial adjourned to 4-5-56.

Docket Entries in Civil Action No. 1231-52.

4- 6-56	Trial continued: (4-5-56). Trial adjourned to 4-6-56.
4-10-56	Trial continued: (4-6-56). Proposed findings of fact and conclusions of law to be submitted. Decision Reserved.
6- 6-56	Stipulation re editorial corrections in the official transcript, filed 6-5-56.
8-17-56	Transcript of trial filed (5 volumes).
12-31-56	Opinion filed 12-28-56. (Modarelli).
1-14-57	Notice of motion by plaintiff for settlement of judgment, and acknowledgment of service, filed 1-11-57 (ret. 1-28-57) (No brief submitted)
1-29-57	Hearing on plaintiff's motion for settlement of judgment. Decision Reserved. (Modarelli) (1-28-57)
2- 4-57	Transcript of hearing on motion for settlement of terms of judgment, filed.
2-13-57	Final judgment declaring certain claims valid and other claims invalid; dismissing all counterclaims not specifically covered herein; declaring certain claims infringed by defendant; referring the question of damages re: infringement to a Special Master and finding in favor of the plaintiff, The Cold Metal Products Company, in the sum of $622,771.58, and against the defendant, Crucible Steel Company of America, with costs filed 2-8-57. (Modarelli) Notice mailed.

Docket Entries in Civil Action No. 1231-52.

2-18-57	Consent Order Amending Judgment filed. (Modarelli) Notice mailed.
2-18-57	Notice of Appeal filed.
2-18-57	Consent Order for Stay Upon Appeal filed 2-18-57. (Modarelli) Notice mailed.
2-18-57	$250.00 deposited in Registry in lieu of appeal bond.
2-18-57	Clerk's Certificate of Cash Deposit filed.
2-18-57	Copies of notice of appeal sent to O'Mara, Schumann, Davis & Lynch, Esqs., and Clerk, U.S.C.A.
2-19-57	Warrant for Satisfaction of Judgment in the sum of $199,570.27 ONLY, as appears in paragraph 1 of judgment, filed.
2-25-57	Notice of Appeal, filed 2-21-57.
2-25-57	Copies forwarded to Pitney, Hardin & Ward, Esqs., and to Clerk, USCA.
2-25-57	$250.00 deposited in Registry in lieu of Appeal Bond.
2-25-57	Clerk's Certificate of cash deposit, filed.

Complaint in Civil Action No. 1231-52.

For its Complaint, plaintiff says:

1. Plaintiff, The Cold Metal Products Company, is a corporation organized and existing under the laws of the State of Ohio, having a place of business at Youngstown, Ohio. Defendant, Crucible Steel Company of America, is a corporation organized and existing under the laws of the State of New Jersey, having a regular and established place of business at Harrison, New Jersey. The matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars ($3,000.00).

2. On or about September 30, 1946, plaintiff and defendant entered into a license agreement, a true and correct copy of which is marked Exhibit A and attached hereto and made a part hereof.

3. Under said agreement, plaintiff granted to defendant a non-exclusive right and license under certain United States Letters Patent set forth therein (a) to make or have made for its own use mills and equipment coming under the United States Letters Patent set forth therein, (b) to own and use said mills and equipment, (c) to practice processes coming within the scope of said patents throughout the United States, its territories and possessions, and (d) to use and sell the products of said mills, equipment and processes anywhere in the world. In return for the rights granted by plaintiff to the defendant, defendant agreed to pay to plaintiff certain royaltics on products rolled on mills or equipment under said United States Letters Patent, as set forth in Section III of said agreement.

4. Pursuant to the rights granted to it under said agreement, defendant made or had made for its own use a two-stand reversing hot rolling mill and equipment coming under said United States Letters Patent and has used and continues to use said mill and equipment and has practiced and continues to practice processes coming within the scope of said United States Letters Patent and has used and sold and continues to use and sell the products of said mill, equipment and processes.

5. For the period commencing April 1, 1949 to November 30, 1951, defendant paid to plaintiff certain royalties asserted by defendant to be due pursuant to the terms of said agreement, but the amounts actually paid by defendant were computed and determined by defendant on entirely incorrect bases, as a consequence of which the royalties actually paid by defendant were far less than the amounts due pursuant to the terms of said agreement. In addition, during said period from April 1, 1949 to November 30, 1951, defendant used said mill and equipment coming under said United States Letters Patent and practiced processes coming within the scope of said Letters Patent in the rolling of products subsequently used or sold by the defendant and which defendant failed to report to plaintiff and to pay the royalties due thereon pursuant to the terms of said agreement. Plaintiff is without sufficient information to enable it to allege the exact amount due pursuant to said agreement for the period from April 1, 1949 to November 30, 1951 and, therefore, seeks discovery and an accounting herein to enable it to ascertain the exact amount of the additional royalties due to it pursuant to the terms of said agreement.